

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

IN RE:	§	
	§	
BARRY LEE DENNIS,	§	CASE NO. 03-50222-RLJ-7
	§	
DEBTOR	§	

**MEMORANDUM OPINION AND ORDER**

Hearing was held on August 20, 2003, on the Trustee's objection to the Debtor's exemption claim under § 522(d)(1) of the Bankruptcy Code to a lien interest in the Debtor's former marital residence. The matter was submitted on stipulated facts set forth in the Joint Pre-Hearing Order which was entered by the court on August 21, 2003. The court adopts the parties' stipulated facts.

The court has jurisdiction of this proceeding pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A), (B). This Memorandum Opinion contains the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and FED. R. BANKR. P. 9014.

As stated in the Pre-Hearing Order, a copy of which is attached hereto, the issue before the court is whether the Debtor's lien against his former marital residence, which such lien was awarded to him pursuant to a divorce decree entered in February, 2000, may be exempted from his bankruptcy estate under 11 U.S.C. § 522(d)(1). As both the Debtor and the Trustee acknowledge, the opinion of *In re Johnson*, 288 B.R. 130 (8th Cir. BAP 2003) is directly on

point. The Debtor's former marital residence was awarded to his ex-wife and is presently occupied by his former spouse and the Debtor's minor children. The *Johnson* court held that a debtor may exempt, under § 522(d)(1), a lien interest in a former marital residence as an "aggregate interest, not to exceed \$17,425 in value, in real property that . . . a dependent of the debtor uses as a residence . . . ." *Id.*

In *Johnson*, there was no dispute on whether the debtor's minor child qualified as a dependent under the statute. The Trustee does not concede such point here. In fact, the parties stipulated that Mr. Dennis does not claim his minor children as dependents on his federal income tax returns. The court notes, however, that Mr. Dennis's minor children live with their mother in the home and Mr. Dennis pays child support. Exemption statutes are to be construed liberally in the debtor's favor. *In the Matter of Barker*, 768 F.2d 191, 195 (7th Cir. 1985). Most courts that have construed the term "dependent" have done so in a fashion that is consistent with the liberal construction to be accorded exemption statutes. *See, e.g., In re Meler*, 295 B.R. 625, 630-31 (Bankr. D. Ariz. 2003) (evaluating whether debtor had a legal or mere moral obligation to support purported dependent); *In re Rigdon*, 133 B.R. 460, 465-66 (Bankr. S.D. Ill. 1991) (rejecting any statutory test for dependent and applying a plain language definition of dependent); *In Re Dunbar*, 99 B.R. 320, 324 (Bankr. M.D. La. 1989) (applying the plain meaning of dependent to be, "a person who reasonably relies on the debtor for support and whom the debtor has reason to and does support financially"); *In re Tracey*, 66 B.R. 63, 66-67 (Bankr. D. Md. 1986) (choosing to use a more liberal definition instead of the I.R.S. support formula test). The court finds that Mr. Dennis's minor children qualify as dependents under the statute.

The facts of the instant case are identical to those set forth in *Johnson* and the court finds that the holding of *Johnson* is controlling in this case. The Trustee argues that sections 544 or 549 of the Code somehow jeopardizes the Debtor's exemption claim because he failed to record his lien. Such provisions are not applicable to the facts of this case. It is, therefore,

ORDERED that the Trustee's objection to the Debtor's claim of exemption to the marital lien is denied.

DATED: September 18, 2003.

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ROBERT L. JONES  
UNITED STATES BANKRUPTCY JUDGE

The Clerk shall furnish copies to:

Attorney for Debtor: Elizabeth S. Huffman, 1706 Fourteenth St., Lubbock, TX 79401; and

Chapter 7 Trustee: Max Ralph Tarbox, Law Offices of Max R. Tarbox, 3223 South Loop 289, Suite 414, Lubbock, TX 79423.